

REMARKS

This Application has been carefully reviewed in light of the Final Action mailed February 24, 2005. In order to advance prosecution of the present Application, Claims 3, 6, 9, 15, 21, and 27 have been amended. Applicant respectfully requests reconsideration and favorable action in this Application.

Claims 1, 6, 7, 12, 13, 18, 19, 24, 25, and 30 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lee, et al. in view of Muszynski. Applicant respectfully traverses this Rejection.

Independent Claims 1, 7, 13, 19, and 25 recite in general the ability to dynamically relocate a call anchor function for the data to one of the base transceiver station and the communication device by a selection procedure during data transmission between the first and second mobile units. By contrast, the Lee, et al. patent discloses performing inter-system soft handoff for a call but maintains its call anchor at a specific base station controller during the entire call and never relocates the call anchor function to a different device during the call. Thus, as readily admitted to by the Examiner, the Lee, et al. patent does not relocate the call anchor function to a different device during data transmission to and from mobile units as provided in the claimed invention. The Muszynski patent discloses performing inter-exchange handoffs using a centralized anchor at its mobile switching center. Thus, as readily admitted to by the Examiner, the Muszynski patent does not relocate the call anchor function to a different device during data transmission to and from mobile units as provided in the claimed invention. To fill the gap caused by the deficiencies of the Lee, et al. and Muszynski patents, the Examiner cites the Boudreaux patent for its for relocating of the duties of a serving wireless gateway to a

drift wireless gateway. However, as provided in the Boudreaux patent at col. 4, line 63, to col. 5, line 6, the drift and serving wireless gateways are base station controllers. Though the Boudreaux patent provides for a drift wireless gateway to become a serving wireless gateway, such relocation is only performed at the base station controller level of the Boudreaux patent. The Boudreaux patent provides no capability to relocate a call anchor function to its node B base transceiver station as required in the claimed invention. As a result, none of the Lee, et al., Muszynski, nor Boudreaux patents are capable of relocating a call anchor function to a base transceiver station as provided by the claimed invention.

Independent Claims 12, 18, 24, and 30 recite in general the ability for the base transceiver station to perform the call anchor function and relocate the call anchor function to another device in the system. As discussed above, none of the Lee, et al., Muszynski, nor Boudreaux patents disclose an ability for a base transceiver station to perform the call anchor function let alone a capability to relocate the call anchor function as provided in the claimed invention.

Independent Claim 6 recites ". . . relocating the call anchor function during data transmission between the first and second mobile units to the base transceiver station in the communication system in response to a communication characteristic of the data." By contrast, as discussed above, none of the Lee, et al., Muszynski, nor Boudreaux patents allow for a call anchor function to be relocated to a base transceiver station as required in the claimed invention.

As shown above, the lee, et al., Muszynski, and Boudreaux patents lack any disclosure that teaches or suggests the claimed invention. Therefore, Applicant respectfully submits that Claims 1, 6, 7, 12, 18, 19, 21, 24, 25, and 30 are

patentably distinct from the proposed Lee, et al. - Muszynski - Boudreaux combination.

Claims 6, 12, 18, 24, and 30 stand rejected under 35 U.S.C. §102(b) as being anticipated by Lee, et al. Independent Claims 6, 12, 18, 24, and 30 recite in general the ability to relocate the call anchor function for the data to a different device in the communication system during data transmission to and from the mobile unit in response to a communication characteristic of the data. By contrast, as discussed above, the Lee, et al. patent discloses performing inter-system soft handoff for a call but maintains its call anchor at a specific base station controller during the entire call and never relocates the call anchor function to a different device during the call. Thus, the Lee, et al. patent does not relocate the call anchor function to a different device during data transmission to and from mobile units as provided in the claimed invention. Therefore, Applicant respectfully submits that Claims 6, 12, 18, 24, and 30 are not anticipated by the Lee, et al. patent.

Applicant notes with appreciation the allowance of Claims 2, 8, 14, 20, and 26.

Applicant notes with appreciation the allowability of Claims 3-5, 9-11, 15-17, 21-23, and 27-29 if amended into appropriate independent form. Claims 3, 9, 15, 21, and 27 have been amended into independent form as suggested by the Examiner. Therefore, Applicant respectfully submits that Claims 3-5, 9-11, 15-17, 21-23, and 27-29 are in condition for allowance.

With the presentation of five new independent claims, an additional filing fee is due. Attached herewith is a check made payable to the "Commissioner of Patents and Trademarks" in an amount of \$1000.00 to satisfy the excess independent claims fee of 37 C.F.R. §1.16(b).

This Response to Examiner's Final Action is necessary to address the new grounds of rejection and newly cited art raised and identified by the Examiner. This Response to Examiner's Final Action could not have been presented earlier as the Examiner has only now raised the new grounds of rejection and identified the newly cited art.

Applicant notes that the Examiner has failed to provide an indication that the documents cited in the Information Disclosure Statement of November 2, 2004 have been considered during the examination of this Application. Applicant respectfully requests the Examiner to provide the appropriate indication that the documents cited therein have been considered.

Applicant respectfully requests withdrawal of the finality of the present Office Action. "Before final rejection is in order a clear issue should be developed between the examiner and applicant." M.P.E.P. §706.07. A clear issue has not been developed between the Examiner and Applicant with respect to the Boudreaux patent as the Examiner has only now used the Boudreaux patent to support a rejection of these claims. According to M.P.E.P. §706.07, hasty and ill-considered final rejections are not sanctioned. "The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application." M.P.E.P. §706.07. "To bring the prosecution to as speedy conclusion as possible and at the same time to deal justly by both the applicant and the public, the invention as disclosed and claimed should be thoroughly searched in the first action and the references fully applied; and in reply to this action the applicant should amend with a view to avoiding

all the grounds of rejection and objection." M.P.E.P.
§706.07.

Applicant responded to the first Office Action of August 3, 2004 and overcame the proposed Lee, et al. and Muszynski combination used by the Examiner to reject these claims. Now the Examiner comes back with the Boudreaux patent in combination with the Lee, et al. and Muszynski patents which was available to the Examiner for consideration in the previous Office Action but which the Examiner did not use as a basis for any rejection of these claims in the previous Office Action. The Examiner now uses the Boudreaux patent in the same manner as the Lee, et al. and Muszynski patents were used in the previous Office Action. Thus, the Examiner has not followed the M.P.E.P. where it states that "[s]witching from . . . one set of references to another by the examiner in rejecting in successive actions claims of substantially the same subject matter, will alike tend to defeat attaining the goal of reaching a clearly defined issue for an early termination, i.e., either an allowance or a final rejection." Amendments to the claims in response to the previous Office Action did not substantially change the subject matter of the claims to force the Examiner to now use the Boudreaux patent where it could not have been used in the previous Office Action.

As a result, Applicant has not been given the cooperation of the Examiner as required and has been denied an opportunity to fully address the Boudreaux patent and associated new grounds of rejection that could have been cited in the previous Office Action. By not providing Applicant the capability to fully respond to the Boudreaux patent without the assurance that the response would be considered and entered, the Examiner has prematurely cut off prosecution of the present Application. Applicant has not been given a full

and fair hearing to which it is entitled and a clear issue has not been developed as required. Therefore, Applicant respectfully submits that the final rejection is premature and that the finality of the present Office Action be withdrawn.

CONCLUSION

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other apparent reasons, Applicants respectfully request full allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorneys for Applicants



Charles S. Fish

Reg. No. 35,870

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CORRESPONDENCE ADDRESS:

2001 Ross Avenue, Suite 600

Dallas, TX 75201-2980

(214) 953-6507

Customer Number: 05073